

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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CASSANDRA R.,

Plaintiff,

v.

5:20-cv-1181  
(ML)

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

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APPEARANCES:

OLINSKY LAW GROUP  
Counsel for the Plaintiff  
250 South Clinton Street  
Suite 210  
Syracuse, New York 13202

SOCIAL SECURITY ADMINISTRATION  
Counsel for the Defendant  
J.F.K. Federal Building, Room 625  
15 New Sudbury Street  
Boston, Massachusetts 02203

MIROSLAV LOVRIC, United States Magistrate Judge

OF COUNSEL:

ANDREW A. FLEMMING, ESQ.

NATASHA OELTJEN, ESQ.  
Special Assistant U.S. Attorney

**ORDER**

Currently pending before the Court in this action, in which Plaintiff seeks judicial review of an adverse administrative determination by the Commissioner of Social Security, pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), are cross-motions for judgment on the pleadings.<sup>1</sup> Oral

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<sup>1</sup> This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order once issue has been joined, an action such as this is considered procedurally, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

argument was heard in connection with those motions on March 2, 2022, during a telephone conference conducted on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination was supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by Plaintiff in this appeal.

After due deliberation, and based upon the Court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is

**ORDERED** as follows:

- 1) Plaintiff's motion for judgment on the pleadings (Dkt. No. 11) is DENIED.
- 2) Defendant's motion for judgment on the pleadings (Dkt. No. 14) is GRANTED.
- 3) The Commissioner's decision denying Plaintiff Social Security benefits is

AFFIRMED.

- 4) Plaintiff's Complaint (Dkt. No. 1) is DISMISSED.
- 5) The Clerk of Court is respectfully directed to enter judgment, based upon this

determination, DISMISSING Plaintiff's Complaint in its entirety and closing this case.

Dated: March 7, 2022  
Binghamton, New York



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Miroslav Lovric  
United States Magistrate Judge  
Northern District of New York

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----x  
CASSANDRA R.,

Plaintiff,

-v-

5:20-CV-1181

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

-----x  
**TRANSCRIPT OF PROCEEDINGS**  
**BEFORE THE HONORABLE MIROSLAV LOVRIC**  
March 2, 2022  
15 Henry Street, Binghamton, New York

For the Plaintiff:  
(Appearance by telephone)

OLINKSY LAW GROUP  
300 South State Street  
Suite 420  
Syracuse, New York 13202  
BY: **ANDREW AUSTIN FLEMMING, ESQ.**

For the Defendant:  
(Appearance by telephone)

SOCIAL SECURITY ADMINISTRATION  
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15 New Sudbury Street  
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BY: **NATASHA OELTJEN, ESQ.**

*Hannah F. Cavanaugh, RPR, CRR, CSR, NYACR, NYRCR  
Official United States Court Reporter  
100 South Clinton Street  
Syracuse, New York 13261-7367  
(315) 234-8545*

1 (The Court and all parties present by telephone.

2 Time noted: 12:10 p.m.)

3 THE COURT: Well, let me begin by indicating first  
4 that in this matter the Court has reviewed the briefings from  
5 both parties, the plaintiff and defendant. The Court has also  
6 reviewed the administrative record and taken into account also  
7 the arguments presented by the parties.

8 So I want to begin by indicating first that in this  
9 case plaintiff commenced this proceeding pursuant to Title 42,  
10 United States Code, Sections 405(g) and 1383(c) to challenge the  
11 adverse determination by the Commissioner of Social Security  
12 finding that she was not disabled at the relevant times and  
13 therefore ineligible for the benefits that she sought.

14 By way of background, the Court notes the following:  
15 Plaintiff was born in 1982. She is currently approximately  
16 39 years old. She was approximately 34 years old on March 22,  
17 2017, the date of application. Plaintiff lives with her husband  
18 who does the household chores, grocery shopping, and drives her  
19 to various places. Plaintiff is approximately 5'2" in height  
20 and weighs approximately 185 pounds. Plaintiff has a high  
21 school degree and can communicate in English. Plaintiff does  
22 not have any past relevant work history.

23 Plaintiff suffers from the following severe  
24 impairments: Asthma and small pulmonary embolism. She states  
25 that she also has nonsevere impairments of wry neck, irritable

1 bowel syndrome, depression, and anxiety. Plaintiff takes  
2 albuterol nebulizer machine, Tramadol, Prednisone, Eliquis,  
3 Xarelto, and Xanax.

4 Plaintiff testified at the hearing that she does not  
5 drive because her medication causes dizziness, she only leaves  
6 the house for medical appointments, that she can walk only 10 to  
7 15 steps before becoming out of breath, that she can lift five  
8 pounds, and that she has shortness of breath and dizziness when  
9 she attempts housework.

10 Procedurally, the summary history of this case is as  
11 follows: Plaintiff applied for Title XVI benefits on March 22nd  
12 of 2017, alleging an onset date of January 1st of 2016. In  
13 support of her claim for disability benefits, plaintiff claims  
14 disability based on asthma and that her medications make her  
15 feel dizzy and nauseous, and small pulmonary embolism that  
16 caused her some exertional limitations.

17 In this case, Administrative Law Judge Paul D.  
18 Barker, Junior conducted a hearing on July 11, 2019, to address  
19 plaintiff's application for benefits. ALJ Barker issued an  
20 unfavorable decision on August 6th of 2019. That decision  
21 became a final determination of the agency on July 24th of 2020,  
22 when the Social Security Administration Appeals Council denied  
23 plaintiff's application for review. This action was commenced  
24 on September 25th of 2020, and it is timely.

25 In his decision, ALJ Barker applied the familiar

1 five-step test for determining disability. At step one, he  
2 concluded that plaintiff had not engaged in substantial gainful  
3 activity since March 22nd of 2017, the application date.

4 At step two, the ALJ concluded that plaintiff suffers  
5 from severe impairments that impose more than minimal  
6 limitations on her ability to perform basic work activities,  
7 specifically asthma and small pulmonary embolism. The ALJ also  
8 considered nonsevere physical impairments of wry neck and  
9 irritable bowel syndrome, and mental impairments of depression  
10 and anxiety disorder.

11 At step three, ALJ Barker concluded that plaintiff's  
12 conditions do not meet or medically equal any of the listed  
13 presumptively disabling conditions set forth in the  
14 Commissioner's regulations, and the ALJ focused on listing 1.02,  
15 dealing with major dysfunction of a joint; listing 1.04,  
16 disorders of the spine; listing 3.03, asthma; listing 12.04,  
17 depressive bipolar and related disorders; and then also listing  
18 12.06, relating to anxiety and obsessive compulsive disorders.

19 At step four, the ALJ next determined that plaintiff  
20 retains the residual functional capacity, also known as RFC, to  
21 perform the full range of sedentary work as defined in 20 C.F.R.  
22 Section 416.967(a) with additional environmental limitations.  
23 The ALJ went on to state plaintiff is capable of lifting and  
24 carrying a maximum of ten pounds at a time, sitting for  
25 approximately six hours, and standing/walking for approximately

1 two hours in an eight-hour workday. The ALJ further indicated  
2 plaintiff cannot be exposed to excessive amounts of dust and  
3 other respiratory irritants and cannot work in environments with  
4 exposure to extreme heat and cold, wetness, and humidity. The  
5 ALJ moved on to step five, as plaintiff did not have any past  
6 relevant work experience.

7 At step five, the ALJ concluded that considering  
8 plaintiff's age, education, work experience, and RFC, the ALJ  
9 concluded that there are jobs that exist in significant numbers  
10 in the national economy that plaintiff can perform. More  
11 specifically, the ALJ found that although plaintiff has a RFC to  
12 perform sedentary work that includes additional limitations in  
13 accommodation of her asthma symptoms, those additional  
14 limitations have little or no effect on the occupational base of  
15 unskilled sedentary work. As a result, the ALJ held that a  
16 finding of not disabled was appropriate pursuant to the  
17 framework of Medical-Vocation Rule 201.27. The ALJ cited SSR  
18 85-15, that limiting her to a work environment free of excessive  
19 amounts of dust and respiratory irritants has only a slight  
20 effect on the occupational base, and citing SSR 96-9p, that few  
21 occupations in the unskilled sedentary occupational base require  
22 work in an environment with extreme cold, heat, wetness, and  
23 humidity. The ALJ concluded that the need to avoid all exposure  
24 does not result in a significant erosion of the occupation base  
25 of sedentary work, noting SSR 96-9p.

1 Now, as the parties know, the Court's functional role  
2 in this case is limited and extremely deferential. I must  
3 determine whether correct legal principles were applied and  
4 whether the determination is supported by substantial evidence,  
5 defined as such relevant evidence as a reasonable mind would  
6 find sufficient to support a conclusion. As the Second Circuit  
7 noted in the case of *Brault v. Social Security Administration*  
8 *Commissioner*, found at 683 F.3d 443, a 2012 case, the circuit  
9 noted the standard is demanding, more so than the clearly  
10 erroneous standard. The Second Circuit also noted in *Brault*  
11 that once there's a finding of fact, that fact can be rejected  
12 only if a reasonable factfinder would have to conclude  
13 otherwise.

14 Now, in this case plaintiff argues that the ALJ's RFC  
15 is not supported by substantial evidence because the ALJ failed  
16 to properly weigh the opinion evidence of treating physician  
17 Dr. David OuYang MD.

18 The Court provides the following analysis and  
19 reasoning in reviewing this case: First, the ALJ assigned  
20 limited weight to Dr. OuYang's assessment, noting that, one, he  
21 treated her only on approximately three occasions; two, there  
22 are no treating records from him that support his opined  
23 limitations; three, there are no treating records from any other  
24 medical providers for the time period at issue that support his  
25 opined limitations; four, treating records establish that

1 plaintiff's asthma was generally well controlled; and five, that  
2 there are no abnormal physical examination findings that would  
3 support the extent of his opinion, see Administrative Transcript  
4 at page 22.

5 This Court finds that the ALJ properly assigned  
6 treating physician Dr. OuYang's opinion less than controlling  
7 weight and considered all of the factors of 20 C.F.R. Section  
8 404.1527(c).

9 As the parties set forth, the treating physician rule  
10 applies because plaintiff filed her claim before March 27th of  
11 2017. In this case, the ALJ stated Dr. OuYang saw plaintiff  
12 once every month starting in May 2019, but also the ALJ noted  
13 that Dr. OuYang provided his opinion in July of 2019. As a  
14 result, the ALJ concluded that Dr. OuYang only treated plaintiff  
15 on approximately three occasions. The ALJ properly discounted  
16 the opinion of Dr. OuYang based on the short duration of  
17 plaintiff's treating relationship with him, see the case of  
18 *Koerber v. Commissioner of Social Security*. That's 19-CV-1070.  
19 It can be found at 220 WL 1915294 at page five, and that's a  
20 Western District of New York, April 20th of 2020, case. And in  
21 that case, it has a holding that the ALJ reasonably discounted a  
22 doctor's opinion who had only been treating the plaintiff for  
23 two months and seen him twice during that time.

24 The Court in this case also notes that the ALJ  
25 properly considered that Dr. OuYang did not include any mental

1 impairments in his list of plaintiff's diagnoses and the record  
2 does not reflect that he provided any mental health treatment  
3 for plaintiff. Despite this, Dr. OuYang completed a chart  
4 assessing plaintiff's mental abilities. The ALJ properly  
5 discounted that portion of Dr. OuYang's opinion as outside the  
6 scope of his expertise.

7 Additionally, Dr. OuYang's opinion was a checkbox  
8 form that did not include an explanation for the limitations he  
9 listed. In addition, both times Dr. OuYang examined plaintiff,  
10 he recorded normal respiratory, cardiovascular, musculoskeletal,  
11 neurological, and psychiatric findings. Moreover, at her visit  
12 on June 6th of 2019, plaintiff reported to Dr. OuYang that her  
13 symptoms were improving and her pain was a zero out of five.  
14 Moreover, as the ALJ properly noted, plaintiff's medical records  
15 reflect that her asthma had fluctuated throughout the relevant  
16 time period, which is in contrast with Dr. OuYang's assessment  
17 that plaintiff's limitations had existed and persisted to the  
18 same degree since at least March 22nd of 2017. Given these  
19 fluctuations, the evidence in the record was mixed, and it was  
20 in fact the ALJ's responsibility as the factfinder to resolve  
21 the conflicts in the evidence.

22 As the defendant sets forth in their brief, the ALJ  
23 properly considered, A, the restrictive opinions of Dr. OuYang,  
24 Mr. Morabito, and Ms. Toth; B, the opinion of consultive  
25 examiner, Dr. Ganesh, that plaintiff had no physical

1 limitations; and C, plaintiff's reported symptoms to formulate a  
2 RFC that was supported by substantial evidence. More  
3 specifically, in accommodation of plaintiff's asthma and  
4 pulmonary embolism, the ALJ limited plaintiff to sedentary work.  
5 Further, due to plaintiff's asthma condition, the ALJ determined  
6 that she cannot be exposed to excessive amounts of dust and  
7 other respiratory irritants, and that she cannot work in  
8 environments with exposure to extreme heat, cold, wetness, or  
9 humidity.

10 Finally, because the Court finds that the ALJ  
11 properly formulated a RFC that is supported by substantial  
12 evidence, I reject plaintiff's arguments that the ALJ was  
13 required to consult a vocational expert. As plaintiff notes,  
14 the RFC did not include significant exertional limitations. The  
15 nonexertional limitations that were included in the RFC had  
16 little or no effect on the occupational base of unskilled  
17 sedentary work that plaintiff could do. Thus, the ALJ was not  
18 required to consult a vocational expert. See SSR 85-15 for the  
19 proposition that where a person has a medical restriction to  
20 avoid excessive amounts of noise, dust, et cetera, the impact on  
21 the broad world of work would be minimal because most job  
22 environments do not involve great noise, amounts of dust, et  
23 cetera. See also SSR 96-9p that stands for the proposition that  
24 in general, few occupations in the unskilled sedentary  
25 occupational base require work in environments with extreme

1 cold, extreme heat, wetness, humidity, vibration, or unusual  
2 hazards. Even a need to avoid exposure to these conditions  
3 would not by itself result in a significant erosion of the  
4 occupational base.

5 Based on all of this and these findings, and as a  
6 result, I therefore conclude and find that plaintiff's motion  
7 for judgment on the pleadings is denied, defendant's motion for  
8 judgement on the pleadings is granted, plaintiff's complaint is  
9 hereby dismissed, and the Commissioner's decision denying  
10 plaintiff benefits is affirmed.

11 That constitutes the Court's decision. As I  
12 indicated, I will file a summary order and append to that order  
13 the transcript of this decision that I just set forth in the  
14 record. I want to thank both sides for excellent briefs and it  
15 certainly is very, very helpful when both parties have very good  
16 briefs for the Court to review. And I thank you both, that's  
17 our decision for today and the court has nothing further to add.

18 I wish you both a good rest of the day and court  
19 stands adjourned. Thank you very much.

20 MR. FLEMMING: Thank you, your Honor.

21 MS. OELTJEN: Thank you.

22 (Time noted: 12:28 p.m.)

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5 CERTIFICATE OF OFFICIAL REPORTER  
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7  
8

9 I, HANNAH F. CAVANAUGH, RPR, CRR, CSR, NYACR,  
10 NYRCR, Official U.S. Court Reporter, in and for the United  
11 States District Court for the Northern District of New York, DO  
12 HEREBY CERTIFY that pursuant to Section 753, Title 28, United  
13 States Code, that the foregoing is a true and correct transcript  
14 of the stenographically reported proceedings held in the  
15 above-entitled matter and that the transcript page format is in  
16 conformance with the regulations of the Judicial Conference of  
17 the United States.

18 Dated this 4th day of March, 2022.

19  
20 s/ Hannah F. Cavanaugh  
21 HANNAH F. CAVANAUGH, RPR, CRR, CSR, NYACR, NYRCR  
22 Official U.S. Court Reporter  
23  
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25